IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (ST.)NO.25935 OF 2005
WITH
CIVIL APPLICATION NO.2025 OF 2005

Anna Laxman Tupe @ Yadav & Ors. ..Applicants.

V/s.

Sitaram L. Yadav @ Tupe. ..Respondent.

Mr.S.M.Kamble for applicants.

Mr.R.V.More for respondent.

CORAM: A.M.KHANWILKAR,J
DATE : FEBRUARY 28, 2006.

P.C. :

1. Heard.

2. Admit.

3. Mr.More waives notice for repondent.

4. As short question is involved, appeal is taken up for final disposal forthwith by consent.

5. This appeal takes exception to the order passed by the I Adhoc Additional District Judge, Sangli dated November 30, 2004 in Regular Civil Suit No.421 of 1997. The lower appellate court dismissed the appeal preferred by the appellants on account of

non-appearance of the advocate and the appellants, when the appeal was called out. This is the limited issue that arises in the present Second Appeal. The substantial question of law that arises for consideration is whether the litigant should suffer for the mistake of the advocate in not appearing before the court at the relevant time. It is well settled that for the mistake of the advocate, litigant should not suffer. The appellants on affidavit have stated that they had absolutely no intimation about the date of hearing of the appeal or about order passed by the lower appellate court dismissing the appeal for default. No reason is forthcoming from the advocate as to what prevented him to appear before the lower court when the matter was called out. In this situation, the appellants will have to be granted one indulgence. I am in agreement with the submission canvassed on behalf of the respondent that court may remand back the proceedings on certain terms, so that the appeal before the lower court will proceed in time bound programme.

6. In the circumstances, while setting aside the impugned Judgment and decree passed by the first Adhoc Additional District Judge, Sangli dated

November 30, 2004 in Regular Civil Appeal No.421 of 1997, Regular Civil Appeal No.421 of 1997 is restored to the file of the lower appellate court to be proceeded on merits in accordance with the law.

7. The parties shall appear before the concerned District Judge on 16th March, 2006, when the concerned Court will specify the date of hearing of the restored appeal. The restored appeal shall be disposed of as expeditiously as possible preferably by end of April, 2006. The appellants shall not seek any adjournment on any count whatsoever and appear before the court on the notified dates.

8. The appellants shall pay costs to the respondent for the indulgence shown to the appellants of restoring the appeal, quantified at Rs.7,500/- to be paid within two weeks from today, as condition precedent.

9. Appeal as well as civil application disposed of accordingly.